

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WARREN EASLEY,)	
Plaintiff,)	
)	C.A. No. 22-135 Johnstown
v.)	
)	District Judge Susan Paradise Baxter
CRNP BLOOM, et al.,)	Magistrate Judge Richard A. Lanzillo
Defendants.)	

MEMORANDUM ORDER

Plaintiff Warren Easley, an inmate formerly incarcerated at the State Correctional Institution at Houtzdale, Pennsylvania (“SCI-Fayette”),¹ commenced this *pro se* civil rights action on August 23, 2022. He subsequently filed an amended complaint on September 16, 2022, which is the operative pleading in this case [ECF No. 4]. Named as Defendants are the following staff members at SCI-Houtzdale: CRNP Adam Bloom (“Bloom”); Chief Psychiatrist Ingrid Renberg (“Renberg”); Deputy Superintendent Michelle Ivicic (“Ivicic”); and Licensed Psychology Manager Sean Bresnahan (“Bresnahan”). Plaintiff alleges that Defendants violated his First and Eighth Amendment rights by deliberately ignoring his attempts to commit suicide and engaging in unlawful retaliation. This matter was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On February 9, 2023, Defendants Bloom and Renberg filed a motion to dismiss [ECF No. 39], seeking dismissal of all claims against them for failure to state a claim. The motion was fully briefed by the parties.

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Plaintiff is presently incarcerated at SCI-Rockview in Bellefonte, Pennsylvania.

In the meantime, after failing to file a timely response to the amended complaint, Defendants Bresnahan and Ivicic filed a *nunc pro tunc* motion for extension of time to file an answer [ECF No. 43]. This motion was granted by Order dated March 6, 2023, and a responsive pleading was required to be filed by March 14, 2023 [ECF No. 49]. One month after this deadline passed with no response having been filed, Judge Lanzillo issued a Report and Recommendation, *sua sponte*, on May 15, 2023 (“R&R1”), recommending that default judgment be entered in favor of Plaintiff and against Defendants Bresnahan and Ivicic, pursuant to Rule 55 of the Federal Rules of Civil Procedure [ECF No. 56].

Defendants Bresnahan and Ivicic subsequently filed timely objections to R&R1, and a brief in support thereof [ECF Nos. 61, 62], objecting to the recommendation that default judgment be entered against them because such relief is prohibited by the Prison Litigation Reform Act (“PLRA”), 42 U.S.C. §1997e(g). This Court agrees. As Defendants cite in their objections, the PLRA allows defendants named in an action filed by a *pro se* prisoner to waive their right to reply to the complaint, without suffering the entry of default judgment against them. 42 U.S.C. §1997e(g)(1). No relief can be granted in favor of a *pro se* prisoner plaintiff unless a reply is filed. *Id.* Accordingly, the Court will decline to adopt R&R1.

On July 17, 2023, Judge Lanzillo issued a second Report and Recommendation (“R&R2”) recommending that the motion to dismiss filed by Defendants Bloom and Renberg be denied as to Plaintiff’s deliberate indifference claim, but granted as to Plaintiff’s First Amendment retaliation claim, without prejudice to Plaintiff’s right to file a curative amendment of such claim. Objections to R&R2 were due to be filed by August 3, 2023; however, no objections have been received to date.

Thus, after *de novo* review of the relevant documents in this case, together with the reports and recommendations and objections thereto, the following order is entered:

AND NOW, this 14th day of August, 2023;

IT IS HEREBY ORDERED that the motion to dismiss filed by Defendants Bloom and Renberg [ECF No. 39] is DENIED as to Plaintiff's Eighth Amendment claim of deliberate indifference against said Defendants and GRANTED as to Plaintiff's First Amendment retaliation claim against said Defendants, without prejudice to Plaintiff's right to amend his complaint to correct the deficiencies of such claim in accordance with Judge Lanzillo's R&R, dated July 17, 2023 (R&R2). Any such amendment must be filed by Plaintiff no later than thirty (30) days after the date of this Order. Plaintiff's failure to file an amendment within such time will result in the dismissal of Plaintiff's retaliation claim against Defendants Bloom and Renberg without further notice. The report and recommendation of Magistrate Judge Lanzillo, issued July 17, 2023 [ECF No. 65], is adopted as the opinion of the court.

IT IS FURTHER ORDERED that the Court declines to adopt Judge Lanzillo's R&R, dated May 15, 2023 [ECF No. 56], and default judgment in favor of Plaintiff and against Defendants Bresnahan and Ivicic will not be entered.

IT IS FURTHER ORDERED that, pursuant to the PLRA, 42 U.S.C. §1997e(g)(2), Defendants Bresnahan and Ivicic must file an answer or responsive pleading to Plaintiff's amended complaint within twenty (20) days of the date of this Order.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge